

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

CHARLES MORROW, *et al.*,

Plaintiffs,

V.

FLOWERS FOODS, INC., *et al.*

Defendants.

CASE NO: 3:07-cv-00617-MHT

DEFENDANT FLOWERS FOODS, INC.'S, FLOWERS BAKING CO. OF OPELIKA, LLC'S, AND FLOWERS BAKING CO. OF THOMASVILLE, LLC'S MOTION FOR PROTECTIVE ORDER AND/OR MOTION TO QUASH NON-PARTY NATIONAL ACCOUNTS SUBPOENAS

COME NOW, Defendant Flowers Foods, Inc. (“Flowers Foods”), Flowers Baking Co. of Opelika, LLC (“Flowers/Opelika”), and Flowers Baking Co. of Thomasville, LLC (“Flowers/Thomasville”), by and through its undersigned counsel, and respectfully submit this Motion for Protective Order and/or Motion to Quash Non-Party National Accounts Subpoenas (“Motion for Protective Order”).

1. Plaintiffs are comprised of only three current and eight former independent distributors who contracted with Flowers/Opelika or Flowers/Thomasville and who operated out of a limited number of warehouses. Notwithstanding their limited number and geographic representation, Plaintiffs brought this action under Section 216(b) of the Fair Labor Standards Act on behalf of a nationwide class. Plaintiffs' proposed class includes current and former distributors at any one of twenty-five different Flowers Foods' subsidiaries, which are each separate and distinct legal entities.

2. Plaintiffs filed their Motion to Conditionally Certify and Facilitate Class Notice (“Plaintiffs’ Motion”), and Memorandum in support thereof, on behalf of this nationwide class on

September 21, 2007 (Ct. Doc. Nos. 32; 33), pursuant to this Court's Scheduling Order. (Ct. Doc. No. 28.) This Court has not yet ruled on Plaintiffs' Motion.

3. This Court has now heard, and decided, two separate Motions (*i.e.* Motion for Protective Order Limiting Scope of Plaintiffs' 30(b)(6) Videotaped Deposition of Flowers Foods (Ct. Doc. No. 48) and Plaintiffs' Motion to Compel the Production of Documents (Ct. Doc. No. 99)), which specifically addressed Plaintiffs' attempts to obtain pre-conditional certification classwide discovery. In response to both Motions, this Court has clearly held that because no decision on conditional certification has been rendered, "this case only involves the named parties and the allegations against them. Thus, discovery is also limited those parties and subject matter." (Ct. Doc. Nos. 64; 102.)

4. Notwithstanding this Court's Orders, Plaintiffs, without advance or even contemporaneous notice, served subpoenas on sixteen different national accounts, who are not parties to this litigation, seeking classwide discovery. Plaintiffs' subpoenas also sought documents and information which had previously been provided to Plaintiffs by Defendants through multiple waves of document production, in a manner specifically agreed to by both parties, and through 30(b)(6) deposition testimony of two separate individuals specifically designated by Flowers Foods to provide such testimony.

5. Flowers Foods, Flowers/Opelika, and Flowers/Thomasville thus seek a Protective Order and/or Motion to Quash prohibiting Plaintiffs from obtaining the information sought within their subpoenas from non-party national accounts and rendering such subpoenas unenforceable for the reasons cited above.

WHEREFORE, Defendants respectfully requests that this Honorable Court GRANT its Motion for a Protective Order Prohibiting and/or Quashing Non-Party National Accounts Subpoenas, as set forth in the brief filed herewith.

Respectfully submitted this 29th day of April, 2008.

/s/ Kevin P. Hishta
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Co. of Thomasville, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of April, 2008, I electronically filed the foregoing Defendant Flowers Foods, Inc.'s, Flowers Baking Co. of Opelika, LLC's, and Flowers Baking Co. of Thomasville, LLC's Motion For Protective Order And/Or Motion To Quash Non-Party National Accounts Subpoenas with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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